IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL (STAMP) NO.9855 OF 2006

WITH

CIVIL APPLICATION NO.137 OF 2006

AND WITH

CIVIL APPLICATION NO.194 OF 2006
IN
LETTERS PATENT APPEAL (STAMP) NO.9855 OF 2006
IN
CIVIL APPLICATION NO.1993 OF 2005
IN
FIRST APPEAL NO.215 OF 1997

Mr.Agnel Anthony Lobo — Applicant
vs.
1.Micheal Gabriel Fernandes & ors. — Respondents

Mr.G.R.Rege i/b.Ms.Leena R. Sawant for the applicant.

CORAM : R. M. LODHA &
A.S.BAGGA, JJ.

DATED : 27th June, 2006

P.C.

Letters Patent Appeal filed by the appellant, aggrieved by the order dated 21st February, 2006 is itself not maintainable in view of the Full Bench decision of this Court in the case of Rahul Sharad Awasthi v. Ratnakar Trimbak Pandit & ors., 2004(3) Mh.L.J. 706. The Full Bench presided over by one of us (R.M.Lodha,J.) in paragraphs 39 and 41 of the report observed thus:

"39. We have already discussed that section

100-A substituted by Amendment Act of 2002 has a limited retrospectivity inasmuch as appeal from an original decree or order heard and decided by a Single Judge on or after 1st July, 2002 and the judgment and decree passed therein shall not be amenable to Letters Patent Appellate Jurisdiction. However, where Letters Patent Appeal has already been preferred from the judgment and decree of the Single Judge in any appeal from an original decree or order prior to 1st July, 2002, such appeal is saved and shall be considered in accordance with the then existing law.

41. The result of the foregoing discussion may here be shortly summarised:

i) Section 100-A in the Civil Procedure Code, 1908 substituted by section 4 of the Code of Civil Procedure (Amendment) Act, 2002 takes away the right of Letters Patent Appeal on and from 1st July, 2002 in respect of the suit filed before that date where the judgment or order of the learned Single Judge of the High Court in appeal against an original decree or order from such suit is rendered on and after 1st July, 2002 i.e., the date on which the amendment is brought into force. Put it briefly, no Letters Patent Appeal shall lie from the judgment, decree or order of a Single Judge in the first appeal (or by whatever name called) given on or after coming into force of the new section 100-A i.e. 1st July, 2002.

ii) The provisions of section 100-A in the Code of Civil Procedure, 1908 substituted by section 4 of the Code of Civil Procedure (Amendment) Act, 2002 shall not apply to the judgment and order of the Single Judge of the High Court in appeal against an original decree or order rendered before 1st July, 2002 and the Letters Patent Appeal preferred against such judgment or order on or after 1st July, 2002.

iii) In relation to the suit instituted prior to 1st July, 2002 and the judgment or order of the Single Judge of the High Court in appeal against an original decree or order rendered before 1st July, 2002, the pending Letters Patent

Appeal as on 1st July, 2002 preferred against such judgment and order of the Single Judge shall remain unaffected by section 100-A of the Code of Civil Procedure, 1908 as substituted by section 4 of the Code of Civil Procedure (Amendment) Act, 2002.

iv) In other words, section 100-A as substituted by Code of Civil Procedure (Amendment) Act, 2002 has a limited retrospectivity as indicated in clause (i) above and to that extent vested right of the parties to the suit filed prior to 1st July, 2002 is extinguished. The fate of Letters Patent Appeal arising out of any appeal from an original decree or order heard and decided by a Single Judge prior to 1st July, 2002 remains unaffected by the new section 100-A of the Code."

2. Since Letters Patent Appeal is not maintainable, it is liable to be dismissed, even if the delay in filing the appeal is condoned.

3. In view thereof, we dismiss the Letters Patent Appeal as not maintainable.

4. Civil application No.137/2006 (for condonation of delay) and Civil application No.194/2006 (for stay) stand disposed of accordingly.

. Certified copy expedited.

(R.M. LODHA,J.)

(A.S. BAGGA,J.)